

The second point I make in talking about this amendment is that the money we are going to spend on this emergency supplemental bill we will not ever see anywhere when we come to talk about the deficit because it will not get included in the deficit reported by the Federal Government. What it will get included in is the payments your children and grandchildren will have to pay back 30 years from now, amortized at 6 percent, and that \$10 billion is going to come to about \$50 billion when they pay it back. We are reaching forward and stealing opportunity from our kids.

This particular amendment deals with an item in the supplemental that is meant to help a very significant contractor in our defense industry. They do a lot of great things for this country in terms of supplying jobs, giving us great equipment, great ships, great tools for our men and women to fight with and defend this country. I understand the damage that has occurred in both Pascagoula and all the shipyards along the coast. We are making plans to do what is right. In the supplemental, we put greater than \$1.5 billion toward that.

There is a significant amount of loss that was incurred by Northrop Grumman as the hurricane came on shore and damaged both their facilities and their equipment. They had significant operating losses from that. My problem with the amendment is they have insurance with which to cover this loss. No one knows exactly how much it is going to be. Northrop Grumman says by their own public statements that \$500 million was their business interruption cost insurance, so it could be upward of \$500 million. It is probably somewhere between \$100 and \$200 million.

If we allow this amendment to go through, we set significant precedence that we will be hard pressed to ever break.

First of all, this is a private contractor with insurance who is now suing their insurance company for the claims they have made that will not be adjudicated until 2007.

One of the messages we will send if we pass this supplemental with this in it is we will tell the rest of the defense contractors: You do not have to have business interruption insurance. Why would you have to if the Federal Government is going to come in and pick up the tab?

There is an answer that whatever is collected will come back and be paid to the Navy if, in fact, we intercede in the midst of this contract dispute for Northrop Grumman. I hear what the contracting office says, and it is a fairly important point because the contracting officers and the contracting office know the right of legal loss doctrine. Most of our insurance, whether it is homeowners, auto insurance, or business interruption insurance, runs on the doctrine of legal loss. Legal loss in insurance contracting says that if

you get paid by someone else, we do not have to pay you.

This amendment is not so much about being against helping Northrop Grumman; it is about not helping their insurance firm which actually owes this money, which will be adjudicated in the future, and not limiting their responsibility and not transferring that responsibility from them to our children and our grandchildren.

September 28, 2005—this is the Contract Management Agency for the Defense Department:

This office believes it would be inappropriate to allow Northrop Grumman to bill for costs potentially recoverable by insurance because payment by the Government may otherwise relieve the carrier from their policy obligation.

If the Government pays the costs, or agrees that the costs are even tentatively or conditionally allowable, there is a risk that insurers will deny coverage on the basis that there has been no loss suffered by Northrop Grumman.

In fact, that is exactly right. If we pay the loss, Northrop Grumman does not have a loss, and therefore the legal loss doctrine will apply to this contract, so there will not be a lawsuit. This is in litigation.

I also make the point that Northrop Grumman, by their CEO's own statements this year, said that it continues to expect sales of \$31 billion; earnings per share between 4.25 and 4.40; and cash from operations, free cashflow, between \$2.3 and \$2.6 billion. If this is \$100 million or \$200 million, they have all the capability in the world to borrow that money, pay the interest, and collect the interest charges against the insurance company. We are setting a terrible precedent by doing this.

The other thing we are going to do is send a message to every other defense contractor: Don't get business interruption insurance because we will come in and pick up the tab.

I want them to be fully remunerated. I want the shipyards to be up and running. I want every aspect we can deploy that will make things happen, that will resecure the jobs, resecure our production of ships. But I don't want to do that when Factory Mutual Insurance Company really should be on the hook for this, not our children and our grandchildren.

The other point I make is should companies that contract as defense suppliers and make billions each year be put ahead of the others waiting in line for help? Is it going to be our policy by this bill to further subsidize the business interruption insurance of all the rest of the contractors?

Their own litigation filed in California says:

There is no reason to allow Factory to avoid accountability for its wrongful actions.

I agree. And by keeping this in the bill, we will allow Factory Mutual to avoid accountability for its obligations.

Mr. President, I ask unanimous consent to have printed in the RECORD the

Defense Contract Management Agency letter, dated September 28, 2005. There has also been the filing of Northrop Grumman Corporation against Factory Mutual Insurance Company in the U.S. District Court for the Central District of California.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DEFENSE CONTRACT
MANAGEMENT AGENCY,

Los Angeles, CA, September 28, 2005.

Memorandum for all Sector Administrative Contracting Officers (ACOs).

Subject: Hurricane Guidance.

Until all avenues for recovery from insurance carriers are exhausted by the contractor it is recommended that Contracting Officers not approve payments for costs associated with or related to the hurricane disaster(s) if such costs are potentially recoverable through insurance by the contractor.

This office believes that it would be inappropriate to allow Northrop Grumman to bill for costs potentially recoverable by insurance because payment by the Government may otherwise relieve the carrier from their policy obligation.

If the Government pays the costs, or agrees that the costs are even tentatively or conditionally allowable, there is a risk that insurers will deny coverage on the basis that there has been no loss suffered by Northrop Grumman. It is my recommendation that insurance policy(s) be reviewed. Additionally it would be prudent to reach an agreement with Northrop and the insurer before making payments for any otherwise allowable costs.

This matter is under continuing review and additional information will be forwarded as appropriate.

Please forward this correspondence to subordinate sector ACOs. Questions should be addressed to me.

DONALD P. SPRINGER,
Defense Corporate Executive.

Mr. COBURN. I also note that Northrop Grumman is the fourth largest defense contractor we have in the country. I also note that Northrop is already the recipient of billions of dollars in Government contracts, including some contracts that otherwise could be considered largess. I will not go into that.

I would make a final note that the House Appropriations Committee, when they passed their bill, put this into the Record:

The Committee believes strongly that funds in this Act and under this heading in prior Acts should not be used to substitute for private insurance benefits. The Committee is aware that some shipyards have business interruption insurance coverage that could potentially overlap with the Navy's budget for increased delay and disruption costs.

I understand the Navy. We have an obligation for delay and disruption costs. There is no question about that.

On March 1, 2006, the Committee received the Navy's certification that there is no overlap between shipyard insurance claims and the Navy's funding plan, and that costs covered by private insurers were not included in supplemental request estimates. Once again in this bill, the Committee directs the Navy not to obligate funds under this heading until the Secretary of the Navy certifies that no such funds will be used for activities or costs that are subject to reimbursement by any third party, including a private insurer.